THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.26753 of 2000

Dated: 16-12-2005

Between:

Smt. G.Girija, w/p Prabhakar Rao

…..PETITIONER

AND

The Commissioner & Director of School

Education, Government of Andhra Pradesh,

Hyderabad & 4 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P.No.26753 of 2000

ORDER:

This writ petition is directed against the proceedings of the 2nd respondent in R.C. No. 366/A3/2000 dated 24-10-2000 rejecting the case of the petitioner for promotion to the post of School Assistant on the ground that the 5th respondent is senior to the petitioner, as illegal and arbitrary, and consequently to

direct the 2nd respondent to re-fix the seniority of the petitioner and direct the 2nd and 4th respondents to promote the petitioner to the post of School Assistant in the existing vacancy with all consequential benefits.

The brief facts leading to the filing of the writ petition can be narrated as follows:

The petitioner was initially appointed as S.G. Teacher (Assistant) on 2-12-1985 in an aided post in Radiance Upper Primary School, Khairatabad, Hyderabad, and thereafter was transferred to Paropakarini Balika High School, Secunderabad with effect from

20-2-1992 by proceedings dated 20-12-1991 and 4-3-1992 of the 3rd respondent. Petitioner subsequent to her appointment, improved her qualifications from B.A., B.Ed., to M.A., M.Ed., and also passed Head Master's Accounts Test Papers 1 and 2. Though the petitioner's transfer to 4th respondent school was subject to taking the last rank in the category of S.G Teacher, she claims that she is the senior-most S.G. Teacher, eligible for promotion. The petitioner states that ignoring her seniority, the 3rd respondent promoted one Smt. K. Lakshmi Devi to the post of School Assistant, who initially joined as Hindi Pandit Grade-II on 21-6-76 and which post was upgraded to that of Hindi Pandit Grade-I with retrospective effect from 1-8-1983 in the year 1992. The said promotion was given without following the A.P. School Education Subordinate Service Rules, issued in G.O. Ms. No. 40 Education (Ser. II) Department, dated 7-2-1992. As Smt. K. Lakshmi Devi was promoted to the post of Headmistress, there arose a vacancy of School Assistant, and it is the case of the petitioner that she made a representation to the respondents to consider her case for promotion to the said post, which was rejected by the 2nd respondent vide the impugned order on the ground that the 5th respondent is senior to the petitioner. Hence, this writ petition.

Learned counsel for the petitioner submitted that the respondents committed an irregularity in rejecting her case for promotion to the post of School Assistant in the existing vacancy that arose consequent upon the promotion of Smt. K. Laxmi Devi to the post of Headmistress on the ground that the 5th respondent/Mrs.N.Vijaya is senior to the petitioner. He submits that the petitioner subsequent to her joining became S.G. Teacher and she is the senior most S.G. Teacher and eligible for promotion to the next higher post of School Assistant, and as such, the action of the respondents in promoting the 5th respondent to the post of School Assistant, who was promoted to the post of S.G. Teacher, much after the petitioner was promoted, is illegal and arbitrary.

The 3rd Respondent filed counter denying the averments made by the petitioner in the affidavit filed in support of the writ petition. It is stated that the petitioner is junior to the

5th respondent inasmuch as the 5th respondent was appointed as Secondary Grade Teacher on 1-3-1986 and the petitioner was appointed as Secondary Grade Teacher on 20-2-1992 on transfer, that too, on condition that the petitioner will take last rank in the

4th respondent-school, and in view of that, the petitioner's seniority will be counted from 20-2-1992. It is stated that the 5th respondent was promoted in the year 1994 as School Assistant, and the petitioner did not challenge the said promotion, and apart from that the 5th respondent is senior to the petitioner, as the petitioner has been transferred to the 4th respondent institution in the year 1992. The petitioner was transferred from aided institution to the
4th respondent institution which is also an aided institution, and each and every aided institution under different management has to be treated as separate unit for the purpose of preparing the seniority list and promotions are made as per the executive instructions issued by the department from time to time. The averment that the promotion given to the 5th respondent is contrary to G.O. Ms. No. 40 is wholly untenable and the said G.O is applicable only to the Government and Panchayatraj institutions. The 2nd respondent, Regional Joint Director of School Education, Hyderabad, dismissed the appeal of the petitioner, which was filed with inordinate delay. The impugned proceedings are perfectly legal and valid. The petitioner cannot claim seniority over 5th respondent and other teachers who are working in the 4th respondent School much prior to her transfer, and prayed for the dismissal of the Writ Petition.

Respondent No.5 also filed counter affidavit contradicting the contentions of the petitioner in the terms as stated by the
3rd respondent.

Heard the learned counsel for the petitioner, the learned counsel for the official respondents, and the 5th respondent, and perused the material on record.

Admittedly, the petitioner was transferred from Radiance Upper Primary School, Kahiratabad, Hyderabad to Paropakarini Balika High School, Secunderabad as S.G. Teacher (Assistant) on condition that he will take last rank in the seniority list. The petitioner having agreed to take the last rank in the institution to which she was transferred, now cannot be allowed to contend that she should be treated as senior to the other employees working in the transferred institution, and more so when it is the case of the respondents that each aided institution is treated as a separate unit for the purpose of reckoning the seniority of the Teachers working therein. Inasmuch as much prior to the transfer of the petitioner to the 4th respondent institution, the 5th respondent was already working therein, the petitioner cannot contend that she is senior to the 5th respondent. Be that as it may, the petitioner retired from service. The petitioner's counsel is not only in a position to substantiate his argument how the petitioner is senior to 5th respondent, but also is not in a position to say as to how the petitioner will be benefited if she is declared to be senior to 5th respondent. In that view of the matter, no exception can be taken to the action of the official respondents in not considering the case of the petitioner for promotion.

For all the above reasons, the writ petition lacks in merit, and it is accordingly dismissed. However, It is submitted by the learned counsel for the petitioner that the

4th respondent is not processing the pensionary papers of the petitioner under the guise that no decision can be taken pending adjudication of the writ petition before this Court, and prays that the 4th respondent be directed to process the pensionary papers.

Having regard to the submission of the learned counsel for the petitioner, the 4th respondent is directed to process the pensionary papers of the petitioner, as expeditiously as possible. No costs.

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(N.V. RAMANA, J.)

Date: 16th December, 2005.

GRK